

No. B315914

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION FOUR

IN RE RENE ENRIQUEZ,
ON HABEAS CORPUS.

Los Angeles County Superior Court, Case No. BH013600
The Honorable William C. Ryan, Judge

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

	Page
Introduction.....	4
Argument.....	4
I. The Governor’s decision is supported by some evidence	4
II. The superior court erred by reweighing the evidence, discounting the life crimes and Enriquez’s violent and manipulative conduct, and substituting its credibility determination for the Governor’s.....	8
Conclusion	10

TABLE OF AUTHORITIES

	Page
CASES	
<i>In re Fuentes</i> (2005) 135 Cal.App.4th 152	5, 6
<i>In re Lawrence</i> (2008) 44 Cal.4th 1181 (<i>Lawrence</i>)	5, 6, 7
<i>In re Pugh</i> (2012) 205 Cal.App.4th 260	9
<i>In re Rosenkrantz</i> (2002) 29 Cal.4th 616.....	9
<i>In re Shaputis</i> (2011) 53 Cal.4th 192 (<i>Shaputis II</i>)	4, 8, 9
<i>In re Tripp</i> (2007) 150 Cal.App.4th 306.....	9

INTRODUCTION

Some evidence supports Governor Newsom’s 2020 decision finding Rene Enriquez unsuitable for parole, including Enriquez’s extensive history of violent and manipulative behavior. And although he has made positive strides in prison, the record shows Enriquez exhibits other risk factors indicating he still remains an unreasonable risk to public safety.

Enriquez cannot, and does not, show the Governor’s decision is void of evidentiary support or is otherwise arbitrary. He also fails to demonstrate that this Court may disregard the Governor’s credibility determinations. Because the Governor’s decision comports with due process, this Court should vacate the superior court’s order granting habeas relief and affirm the Governor’s decision.

ARGUMENT

I. THE GOVERNOR’S DECISION IS SUPPORTED BY SOME EVIDENCE

Enriquez argues the Governor’s decision was not supported by some evidence that Enriquez currently poses an unreasonable risk of danger to public safety. (Respondent’s Brief (RB) at pp. 18-30.) But this is belied by the record because there is at least “a modicum of evidence” supporting the Governor’s decision. (*In re Shaputis* (2011) 53 Cal.4th 192, 214-215 (*Shaputis II*)). In finding Enriquez unsuitable for parole, the Governor first considered Enriquez’s extensive criminal history, which includes “several armed robberies, gang rape and sodomy of a young woman, sexual assault against another inmate, and multiple murders and assaults,” including the commitment offenses for

which he is incarcerated. (Clerk’s Transcript (CT), Vol. 3, pp. 657-658.) In addition, “[a]s a high-ranking member of the Mexican Mafia,” Enriquez “ordered attacks on other gang members, manufactured and distributed weapons, trafficked drugs, and recruited and trained new members.” (*Id.* at p. 658.)

Enriquez contends his criminal history does not make him an unreasonable risk of danger to public safety today. (RB at pp. 18-20.) The Governor, however, did not rely on Enriquez’s criminal history, standing alone, to find Enriquez unsuitable for parole. Rather, the Governor based his decision on Enriquez’s criminal history and “the presence of *other additional* statutory factors establishing unsuitability.” (*In re Lawrence* (2008) 44 Cal.4th 1181, 1228 (*Lawrence*), emphasis in original.)

In re Fuentes (2005) 135 Cal.App.4th 152, 156, which the California Supreme Court cited in *Lawrence* with approval, is illustrative. There, the appellate court held that some evidence supported the Board’s decision to deny parole based on the commitment offense of first degree felony murder and Fuentes’s criminal history. (*Id.* at p. 157.) Specifically, Fuentes received two court-martials and a bad conduct discharge from the Navy following several arrests for receiving stolen property and possession of a controlled substance. (*Ibid.*) In upholding the Board’s decision, the court acknowledged a psychological evaluation that assessed Fuentes’s level of dangerousness as “low,” but determined “the Board’s concern was not that Fuentes’s criminal history was violent or extensive but that it showed Fuentes had been given opportunities to reform his

conduct to deal with his substance abuse, and to remain in the Navy, and he had not availed himself of these opportunities but had instead engaged in further criminal conduct.” (*Id.* at pp. 157, 163.) Thus, as the California Supreme Court noted in *Lawrence*, the Board’s decision in *Fuentes* was appropriately based upon the crime and criminal history “as evidence of [the] inmate’s repetitive and recidivist nature.” (*Lawrence, supra*, 44 Cal.4th at 1229.)

Like in *Fuentes*, Enriquez’s “extensive history of violent and manipulative behavior *elevates his current risk level*” because it is evidence of his “repetitive and recidivist nature.” (CT, Vol. 3, pp. 657-658, emphasis added; *Lawrence, supra*, 44 Cal.4th at p. 1229.) And in combination with other risk factors, it indicates he remains an unreasonable risk to public safety. In particular, as discussed below, the Governor reasonably questioned the sincerity of Enriquez’s prosocial conduct, given its association with financial rewards and preferential treatment, and relied on other risk factors indicating that Enriquez is still dangerous. (CT, Vol. 3, pp. 657-658.)

Enriquez further asserts that “no evidence supports the Governor’s base speculation that Mr. Enriquez’s rehabilitative progress may not be genuine.” (RB at pp. 20-24.) Not so. Indeed, as the Governor noted, Enriquez’s “violent conduct for his personal gain continued until he began assisting law enforcement, which resulted in favorable treatment.” (CT, Vol. 3, p. 658.) Moreover, the psychologist who evaluated Enriquez in 2020 opined that “because of Mr. Enriquez’s ‘ingrained patterns

of antisocial and narcissistic thinking and behavior. . . some of the prosocial changes he has made may not have been altruistic.” (*Ibid.*) The psychologist further concluded that Enriquez “tends to present as a ‘smooth talker’ who is facile with communication. He is bright and has adequate resources to research what he believes is expected of him and address the issues the parole board and the governor have raised in the past.” (*Ibid.*) Based on these factors, it was reasonable for the Governor to question the sincerity of Enriquez’s prosocial conduct.

The Governor was also concerned about several of Enriquez’s other risk factors indicating that he is currently dangerous. (CT, Vol. 3, p. 658.) Specifically, the psychologist found “significant personality disorder traits, substance abuse issues, extremely negative/violent attitudes, involvement with antisocial individuals, and limited insight into these issues.” (*Ibid.*) And “the psychologist categorized Mr. Enriquez as representing an above-average risk of sexual offense reconviction.” Finally, the psychologist determined that, “despite the mitigating factors of Mr. Enriquez’s age and the absence of information that Mr. Enriquez has sexually offended for more than 30 years, this categorization only ‘slightly’ overstates his current risk level.” (*Ibid.*)

Yet Enriquez contends “no evidence supports the Governor’s mischaracterization of stale ‘risk factors’ as reflective of current dangerousness.” (RB at pp. 24-30.) Contrary to Enriquez’s assertions, the Governor considered both current and historical risk factors. And “there is always some risk Mr. Enriquez could

slip back into maladaptive patterns.” (CT, Vol. 2, p. 444.) In any event, in view of the psychologist’s findings and Enriquez’s “extensive history of violent and manipulative behavior,” it was not unreasonable to the point of arbitrariness for the Governor to conclude that Enriquez poses a current unreasonable risk to public safety. As such, Enriquez “must do more to demonstrate that his desistence from misconduct represents an authentic and enduring transformation in thought and conduct, and not merely an attempt to game the system for his needs.” (CT, Vol. 3, pp. 657-658.)

In sum, there is at least “a modicum of evidence” supporting the Governor’s decision; therefore, the superior court erred in granting the petition. (*Shaputis II, supra*, 53 Cal.4th at pp. 214-215.) Accordingly, the superior court’s order should be reversed.

II. THE SUPERIOR COURT ERRED BY REWEIGHING THE EVIDENCE, DISCOUNTING THE LIFE CRIMES AND ENRIQUEZ’S VIOLENT AND MANIPULATIVE CONDUCT, AND SUBSTITUTING ITS CREDIBILITY DETERMINATION FOR THE GOVERNOR’S

Enriquez argues “the superior court did not reweigh evidence when it examined the record and concluded that there was no evidence of dangerousness.” (RB at pp. 30-38.) Rather, Enriquez claims “the superior court’s opinion reflects both due deference to the Governor and appropriate scrutiny of whether his characterization of the facts was reasonable.” (*Id.* at p. 30.) But, as fully addressed in appellant’s opening brief (AOB), despite the confines of the some-evidence standard of review, the superior court impermissibly reweighed the evidence and discounted the circumstances of Enriquez’s life crimes and

history of violent and manipulative conduct. (AOB at pp. 14-17.) For example, the superior court faulted the Governor for “fail[ing] to note the psychologist’s ultimate determination that Petitioner represents a low risk of violence.” (CT, Vol. 3, p. 706.) The superior court also impermissibly substituted its own credibility determination for that of the Governor. (AOB at pp. 17-19.)

Regardless, the Court’s review here is de novo. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 677.) And, as discussed above, a review of the entire record in the most favorable light, giving deference to the Governor’s determination regarding Enriquez’s credibility, reveals that it was not unreasonable to the point of arbitrariness for the Governor to conclude that Enriquez remains a current unreasonable risk to public safety.

Accordingly, Enriquez “must do more to demonstrate that his desistence from misconduct represents an authentic and enduring transformation in thought and conduct, and not merely an attempt to game the system for his needs.” (CT, Vol. 3, pp. 662-663; *Shaputis II, supra*, 53 Cal.4th at p. 212; *In re Pugh* (2012) 205 Cal.App.4th 260, 273; *In re Tripp* (2007) 150 Cal.App.4th 306, 318 [“Although the Governor simply reviewed the documents before the Board, he was free to make his own credibility determinations. If he had chosen to disbelieve petitioner, we would be bound by that determination.”].) Therefore, it cannot be said that the evidence reflecting Enriquez’s public safety risk leads to but one conclusion. (*Shaputis II, at p. 211.*) Accordingly, this Court should reverse the superior court’s order granting Enriquez’s petition.

CONCLUSION

For the foregoing reasons, appellant respectfully requests the Court reverse the superior court's order granting Enriquez's petition.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **APPELLANT’S REPLY BRIEF** uses a 13 point Century Schoolbook font and contains **1,460** words.

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R. Velasco

Declarant for eFiling

/s/ R. Velasco

Signature

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 28, 2022, at Los Angeles, California.

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